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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,346	11/01/2001	Robert N. Cossins	396451	3708

7590   05/05/2005

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EXAMINER
RAMOS FELICIANO, ELISEO

ART UNIT	PAPER NUMBER
2687	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/004,346	COSSINS ET AL.
	Examiner	Art Unit	
	Eliseo Ramos-Feliciano	2687	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 February 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-49</u> is/are pending in the application.

    4a) Of the above claim(s) <u>33-48</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-32 and 49</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/7/05</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application. Applicant's submission filed on February 7, 2005

has been entered.

Information Disclosure Statement

2.   The references listed in the Information Disclosure Statement filed on February 7, 2005

have been considered by the examiner (see attached PTO-1449 form).

Election/Restrictions

3.   **Claims 33-48** stand withdrawn from further consideration pursuant to 37 CFR 1.142(b),

as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on February 7,

2005.

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created doctrine

grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA

1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to

overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this

application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal

disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR

3.73(b).

5.   **Claim 1** is rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over *claim 11 of U.S. Patent No. 6,343,290.* Although the

conflicting claims are not identical, they are not patentably distinct from each other because of

the following reasons.

Regarding claim 1 of the instant application, claim 11 of U.S. Patent No. 6,343,290 reads

as follows:

"11. A system for managing a network using a processor, the system configured to generate display elements

comprising:

   geographic elements having geographic characteristics;

   network elements having network characteristics and generated for display in relation to the geographic elements;

and

   performance elements having performance characteristics and each generated for display proximal to a

corresponding network element."

It is evident that the claims are essentially the same. The only difference is that the

subject claim of the present application reads "<u>sectored</u> performance elements having <u>sectored</u>

performance characteristics" in contrast to the claim cited above which does not include the

underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at

the time the invention was made because a "sectored performance element" is considered to be a

subset of the inclusive set represented by "performance element". In the same way that different

performance elements can be generated for display, subsets, sections or sectors of those

performance elements can also be generated for display. Additionally, in the same way that

particular "performance characteristics" correspond to "performance elements", "sectored

performance characteristics" also correspond to "sectored performance elements".

6.   **Claim 49** is rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over *claim 99 of U.S. Patent No. 6,343,290*. Although the

conflicting claims are not identical, they are not patentably distinct from each other because of

the following reasons.

Regarding claim 49 of the instant application, claim 99 of U.S. Patent No. 6,343,290

reads as follows:

"99. A method for managing a network using a processor comprising:

   materializing a graphical interface;

   generating for display for the graphical interface a network element; and

   generating for display for the graphical interface a performance element having a performance characteristic;

   wherein the performance element corresponds to the network element."

It is evident that the claims are essentially the same. The only difference is that the

subject claim of the present application reads "<u>sectored</u> performance element having a <u>sectored</u>

performance characteristic" in contrast to the claim cited above which does not include the

underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at

the time the invention was made because a "sectored performance element" is considered to be a

subset of the inclusive set represented by "performance element". In the same way that different

performance elements can be generated for display, subsets, sections or sectors of those

performance elements can also be generated for display. Additionally, in the same way that

particular "performance characteristics" correspond to "performance elements", "sectored

performance characteristics" also correspond to "sectored performance elements".

7.   NOTE: The present specification states that "a sector may include a section or any

portion" – page 39, line 12; and that "the performance element may be a sectored performance

element" – page 39, lines 19-20. Therefore, according the present specification it is understood

that a sectored performance element is a subset of the inclusive set represented by performance

element, and may include the set represented by performance element.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.   **Claims 1-32 and 49** are rejected under 35 U.S.C. 102(b) as being anticipated by Sprecher

et al. (US Patent Number 5,285,494).

Regarding **claim 1**, Sprecher et al. discloses a system for managing a network; see the title. The system utilizes a processor (inherent) and is configured to generate display elements; see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the display elements include:

geographic elements (e.g. West L.A.) having geographic characteristics (e.g. located to the west of Los Angeles);

network elements (cell sites/sectors – col. 5, line 59) having network characteristics (e.g. cell site outages and traffic patterns) and generated for display in relation to the geographic elements (column 3, lines 50-56; column 14, lines 25-28 & 32-35); and

sectored performance elements (see the color codes at legend in Figure 4B – column 4, lines 19-22) having sectored performance characteristics (e.g. critical, major, minor, ..., normal, etc.), each generated for display proximal to a corresponding network element (see "LEGEND" in Figure 4B, and column 4, lines 13-24). According to the LEGEND Figure 4B exhibits a "NORMAL" condition view. Figure 4C, exhibits a sector view of that in Figure 4B. See also column 5, lines 54-68, column 6, lines 1-5 & 66-68, column 7, lines 60-66.

Regarding **claim 2**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses a plurality of sectored performance elements (e.g. cell site status, such as outages, and traffic patterns) for each network element (e.g. cell sites). Each sectored performance element have a corresponding performance characteristic (e.g. critical, major, minor, ..., normal, etc.); see column 3, lines 50-56, column 4, lines 13-24 and Figure 4B, *inter alia*.

Regarding **claim 3**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses that the network includes at least one member of a group consisting of a first area for which first data may be depicted geographically and a second area for which second data may be depicted with respect to performance attributes for the sectored performance elements. Sprecher et al. at least discloses a first area (LA R.O.C.C. – Figure 4B; or WEST LOS ANGELES – Figure 4C) for which first data (LEGEND: critical, major, minor, ..., normal, etc.) may be depicted geographically, see Figures 4B and 4C.

Regarding **claim 4**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses that the network includes at least one member of a group consisting of a communication network, an oil network, a gas network, a store network, a packaging network, and another business network. For example, Sprecher et al. at least discloses a cellular phone network (communication network); see column 1, lines 6-11 & 29-30, column 5, line 60, and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 5**, Sprecher et al. discloses a system for managing a network; see the title. The system utilizes a processor (inherent) and is configured to generate display elements; see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the display elements include:

geographic elements (e.g. West LA) having at least one geographic characteristic (e.g. located to the west of Los Angeles);

network elements (cell sites/sectors – col. 5, line 59) each having at least one network characteristic (e.g. cell site outages and traffic patterns) (column 7, lines 14-19, column 14, lines 25-28 & 32-35); and

sectored performance elements (see the color codes at legend 157 in Figure 4B – column

4, lines 19-22) having at least one sectored performance characteristic (e.g. critical, major,

minor, ..., normal, etc.), each sectored performance characteristic corresponding to a sectored

performance attribute (network usage: traffic; network condition: outages – column 3, lines 50-

56; column 7, lines 13-19) and each sectored performance element generated for display for at

least one network element (Figure 4B-C).

Regarding **claim 6**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that a plurality of sectored performance elements

(color codes at legend in Figure 4B) are generated for display for each network element. See

column 4, lines 19-22. For example, any of the color codes (sectored performance elements) can

be applied to a particular network element. In exemplary Figure 4B, WEST LA depicts a normal

condition represented as a white or blank circle.

Regarding **claim 7**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that the network includes at least one member of a

group consisting of a communication network, an oil network, a gas network, a store network, a

packaging network, and another business network. For example, Sprecher et al. at least discloses

a cellular phone network (communication network); see column 1, lines 6-11 & 29-30, column 5,

line 60, and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 8**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one network element is representative

of at least one member of a group consisting of a communication network element, an oil

network element, a gas network element, a store network element, a packaging network element,

and another business network element. For example, Sprecher et al. at least discloses a cellular

phone network element (communication network element) such as "telephone switches, cellular

phone sites and other related elements"; see column 1, lines 6-11 & 29-30, column 5, line 60,

and column 14, lines 25-28 & 32-35, *inter alia.*

Regarding **claim 9**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one sectored performance

characteristic (see LEGEND explained above; e.g. NORMAL) for at least one sectored

performance element (see color codes explained above) comprises at least one member of a

group consisting of a color, a shade, a cross-hatch, a fill, and a shape. See Figures 4B-4C,

column 4, lines 19-22.

Regarding **claim 10**, Sprecher et al. discloses everything claimed as applied above (see

claim 9). In addition, Sprecher et al. discloses that at least one other sectored performance

characteristic (e.g. MAJOR) for the at least one sectored performance element comprises at least

one member of a group consisting of a second color, a second shade, a second cross-hatch, a

second fill, and a second shape. See Figures 4B-4C, column 4, lines 19-22. For example,

compare slash lines (second color, shade, cross-hatch or fill) for MAJOR with back-slash lines

for MINOR or dots for CRITICAL, *inter alia*, in Figure 4B.

Regarding **claim 11**, Sprecher et al. discloses everything claimed as applied above (see

claim 9). In addition, Sprecher et al. discloses that at least one other sectored performance

characteristic (e.g. MAJOR) for at least one other sectored performance element comprises at

least one member of a group consisting of a second color, a second shade, a second cross-hatch,

a second fill, and a second shape. See Figures 4B-4C, column 4, lines 19-22. For example,

compare slash lines (second color, shade, cross-hatch or fill) for MAJOR with back-slash lines

for MINOR or dots for CRITICAL, *inter alia*, in Figure 4B.

Regarding **claim 12,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one sectored performance element

comprises at least a portion of at least one member of a group consisting of a concentric ring, a

pie-shape, a circle, and a polygon. See Figures 10 & 13, column 7, lines 40-42, and column 9,

lines 51-57.

Regarding **claim 13,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that a plurality of the sectored performance

elements comprise at least a portion of at least one member of a group consisting of a plurality of

stacked polygons and a plurality of concentric rings. See Figures 10 & 13, column 7, lines 40-42,

and column 9, lines 51-57.

Regarding **claim 14,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one sectored performance element

comprises a shape, wherein the shape is configured to vary (e.g. circle or diamond – Figure 4C)

depending on a value of a corresponding sectored performance attribute. (Column 4, lines 13-32

and Figure 10).

Regarding **claim 15,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one sectored performance element has

a position (location in map, graph or figure), and the position is configured to vary depending on

a value of a corresponding sectored performance attribute. (Column 4, lines 13-32).

Regarding **claim 16,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one sectored performance

characteristic of at least one sectored performance element is configured to vary (ranging from a

normal condition to a critical condition) depending on a value of a corresponding sectored

performance attribute (e.g. critical condition). (Column 4, lines 13-32).

Regarding **claim 17,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses a setting selector (system configuration module

139) configured to enable configuration of at least one performance level for each sectored

performance attribute (e.g. network usage as explained above) and to associate a specific

sectored performance characteristic (e.g. critical) to a specific performance level (particular color

code). See column 5, lines 6-7, column 7, lines 40-42, column 8, lines 50-61 and column 4, lines

13-32.

Regarding **claim 18,** Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that the specific sectored performance

characteristic is generated based on a data attribute (ranging from a normal condition to a critical

condition) for the specific performance level. (Column 4, lines 13-32).

As to **claims 19-32,** they are exact corresponding method claims of system *claims 5-18,*

respectively. Therefore, they are rejected for the same reasons explained above.

Regarding **claim 49,** Sprecher et al. discloses a method for managing a network (see the

title) using a processor (inherent) including:

materializing a graphical interface (156) (see Figure 4B; column 14, line 23, column 15,

line 34, column 16, line 41);

generating for display for the graphical interface (156) at least one network element (cell

sites/sectors – col. 5, line 59); and

generating for display for the graphical interface (156) at least one sectored performance

element (see the color codes at legend 157 in Figure 4B – column 4, lines 19-22) having a

sectored performance characteristic (e.g. critical, major, minor, ..., normal, etc.);

wherein the at least one sectored performance element (e.g. color code NORMAL)

corresponds to the at least one network element (e.g. cell site WEST LA). (See Figure 4B,

column 4, lines 19-22).

Response to Arguments

10.   Applicant's arguments filed February 7, 2005 have been fully considered but they are not

persuasive.

11.   The examiner would like to clarify *claims 33-48* are not cancelled but withdrawn from

consideration (see page 11, first two lanes of first paragraph of applicant's response filed

February 7, 2005). Pursuant to MPEP § 821.01, a complete reply to a final rejection must include

cancellation of nonelected claims or other appropriate action (37 CFR 1.144).

12.   Applicant argues that the restriction requirement does not comply with MPEP 806.05 and

amount to a general allegation that the claims stand or fall together (see page 12, second full

paragraph of applicant's response filed February 7, 2005).

The examiner disagrees because as stated in MPEP 806.05(d), two or more claimed

subcombinations, disclosed as usable together in a single combination, and which can be shown

to be separately usable, are distinct from each other. MPEP 806.05 states that if two or more

related inventions are distinct, restriction is proper. In this case, proper reasons have been

provided in the Office action mailed October 15, 2004. The requirement is still deemed proper

and is therefore made FINAL.

13.   With respect to the obviousness-type double patenting rejection, applicant argues

essentially the same as agued before (see page 11, fourth full paragraph to page 12, first full

paragraph of applicant's response filed February 7, 2005). The response presented in the Office

action mailed October 15, 2004 is repeated and incorporated herein by reference.

14.   Applicant argues that "network element", "performance element", "sectored performance

element" and "sectored performance characteristic" should be interpreted as broadly as possible

but consistent with the specification (see page 11, second and third full paragraphs of applicant's

response filed February 7, 2005).

The examiner would like to clarify that "network element", "performance element",

"sectored performance element" and "sectored performance characteristic" have been interpreted

in light of the specification; however, limitations from the specification are not read into the

claims.

Applicant's argument throughout the rest of the response filed February 7, 2005 amount

to the examiner's interpretation. The examiner contends that the argued limitations, "network

element", "performance element", "sectored performance element" and "sectored performance

characteristic", have been properly addressed as shown in the rejection above. The examiner

contends that the claim language does not clearly point out a patentable novelty, that which

applicant thinks the claims present in view of the state of the art disclosed by the references

cited.

The rejection is still deemed proper.

Conclusion

15.   Any inquiry concerning this communication from the examiner should be directed to Eliseo Ramos-Feliciano whose telephone number is 571-272-7925. The examiner can normally be reached from 8:00 a.m. to 5:30 p.m. on 5-4/9 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester G. Kincaid, can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ELISEO RAMOS-FELICIANO 4/29/05
PATENT EXAMINER

ERF/erf
April 29, 2005